

112TH CONGRESS
1ST SESSION

S. 1065

To settle land claims within the Fort Hall Reservation.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2011

Mr. CRAPO (for himself and Mr. RISCH) introduced the following bill; which
was read twice and referred to the Committee on Indian Affairs

A BILL

To settle land claims within the Fort Hall Reservation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Blackfoot River Land
5 Settlement Act of 2011”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) it is the policy of the United States to pro-
9 mote tribal self-determination and economic self-suf-
10 ficiency and encourage the resolution of disputes
11 over historical claims through mutually agreed-upon

1 settlements between Indian tribes and the United
2 States;

3 (2) the Shoshone-Bannock Tribes, a federally
4 recognized Indian tribe with tribal headquarters at
5 Fort Hall, Idaho—

6 (A) adopted a tribal constitution and by-
7 laws on March 31, 1936, that were approved by
8 the Secretary of the Interior on April 30, 1936,
9 pursuant to the Act of June 18, 1934 (25
10 U.S.C. 461 et seq.) (commonly known as the
11 “Indian Reorganization Act”);

12 (B) has entered into various treaties with
13 the United States, including the Second Treaty
14 of Fort Bridger, executed on July 3, 1868; and

15 (C) has maintained a continuous govern-
16 ment-to-government relationship with the
17 United States since the earliest years of the
18 Union;

19 (3)(A) in 1867, President Andrew Johnson des-
20 ignated by Executive order the Fort Hall Reserva-
21 tion for various bands of Shoshone and Bannock In-
22 dians;

23 (B) the Reservation is located near the cities of
24 Blackfoot and Pocatello in southeastern Idaho; and

1 (C) article 4 of the Second Treaty of Fort
2 Bridger secured the Reservation as a “permanent
3 home” for the Shoshone-Bannock Tribes;

4 (4)(A) according to the Executive order referred
5 to in paragraph (3)(A), the Blackfoot River, as the
6 river existed in its natural state—

7 (i) is the northern boundary of the Res-
8 ervation; and

9 (ii) flows in a westerly direction along that
10 northern boundary; and

11 (B) within the Reservation, land use in the
12 River watershed is dominated by—

13 (i) rangeland;

14 (ii) dry and irrigated farming; and

15 (iii) residential development;

16 (5)(A) in 1964, the Corps of Engineers com-
17 pleted a local flood protection project on the River—

18 (i) authorized by section 204 of the Flood
19 Control Act of 1950 (64 Stat. 170); and

20 (ii) sponsored by the Blackfoot River Flood
21 Control District No. 7;

22 (B) the project consisted of building levees, re-
23 placing irrigation diversion structures, replacing
24 bridges, and channel realignment; and

1 (C) the channel realignment portion of the
 2 project severed various parcels of land located con-
 3 tiguous to the River along the boundary of the Res-
 4 ervation, resulting in Indian land being located
 5 north of the Realigned River and non-Indian land
 6 being located south of the Realigned River;

7 (6) beginning in 1999, the Cadastral Survey
 8 Office of the Bureau of Land Management con-
 9 ducted surveys of—

10 (A) 25 parcels of Indian land; and

11 (B) 19 parcels of non-Indian land;

12 (7) many non-Indian landowners and non-Indi-
 13 ans acquiring Indian land have filed claims in the
 14 Snake River Basin Adjudication seeking water rights
 15 that included a place of use on Indian land; and

16 (8) the enactment of this Act and the distribu-
 17 tion of funds in accordance with section 12(b) would
 18 represent an agreement among—

19 (A) the Tribes;

20 (B) the allottees;

21 (C) the non-Indians acquiring Indian land;

22 and

23 (D) the non-Indian landowners.

24 (b) PURPOSES.—The purposes of this Act are—

(1) to resolve the disputes resulting from re-alignment of the River by the Corps of Engineers during calendar year 1964 pursuant to the project described in subsection (a)(5)(A); and

(2) to achieve a fair, equitable, and final settlement of all claims and potential claims arising from those disputes.

SEC. 3. DEFINITIONS.

In this Act:

(1) ALLOTTEE.—The term “allottee” means an heir of an original allottee of the Reservation who owns an interest in a parcel of land that is—

(A) held in trust by the United States for the benefit of the allottee; and

(B) located north of the Realigned River within the exterior boundaries of the Reservation.

(2) INDIAN LAND.—The term “Indian land” means any parcel of land that is—

(A) held in trust by the United States for the benefit of the Tribes or the allottees;

(B) located north of the Realigned River; and

(C) identified in exhibit A of the survey of the Bureau of Land Management entitled “Sur-

1 vey of the Blackfoot River of 2002 to 2005”,
 2 which is located at—

3 (i) the Fort Hall Indian Agency office
 4 of the Bureau of Indian Affairs; and

5 (ii) the Blackfoot River Flood Control
 6 District No. 7, 75 East Judicial, Black-
 7 foot, Idaho.

8 (3) NON-INDIAN ACQUIRING INDIAN LAND.—

9 The term “non-Indian acquiring Indian land” means
 10 any individual or entity that—

11 (A) has acquired or plans to acquire In-
 12 dian land; and

13 (B) is included on the list contained in ex-
 14 hibit C, which is located at the areas described
 15 in clauses (i) and (ii) of paragraph (2)(C).

16 (4) NON-INDIAN LAND.—The term “non-Indian
 17 land” means any parcel of fee land that is—

18 (A) located south of the Realigned River;
 19 and

20 (B) identified in exhibit B, which is located
 21 at the areas described in clauses (i) and (ii) of
 22 paragraph (2)(C).

23 (5) NON-INDIAN LANDOWNER.—The term
 24 “non-Indian landowner” means any individual who
 25 holds fee title to non-Indian land.

1 (6) REALIGNED RIVER.—The term “Realigned
2 River” means that portion of the River that was re-
3 aligned by the Corps of Engineers during calendar
4 year 1964 pursuant to the project described in sec-
5 tion 2(a)(5)(A).

6 (7) RESERVATION.—The term “Reservation”
7 means the Fort Hall Reservation established by Ex-
8 ecutive order during calendar year 1867 and con-
9 firmed by treaty during calendar year 1868.

10 (8) RIVER.—The term “River” means the
11 Blackfoot River located in the State of Idaho.

12 (9) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

14 (10) TRIBES.—The term “Tribes” means the
15 Shoshone-Bannock Tribes.

16 **SEC. 4. RELEASE OF CLAIMS TO CERTAIN INDIAN AND NON-**
17 **INDIAN OWNED LANDS.**

18 (a) RELEASE OF CLAIMS.—On the deposit of all
19 amounts into the tribal trust fund account and the allottee
20 trust fund account under section 7 and the disbursement
21 to non-Indian landowners under section 12—

22 (1) all existing and future claims with respect
23 to the Indian land and the non-Indian land and all
24 right, title, and interest that the Tribes, allottees,
25 non-Indians acquiring Indian land, and non-Indian

1 landowners may have had to that land shall be extin-
2 guished;

3 (2) any interest of the Tribes, the allottees, or
4 the United States, acting as trustee for the Tribes
5 or allottees, in the Indian land shall be extinguished
6 under section 2116 of the Revised Statutes (com-
7 monly known as the “Indian Trade and Intercourse
8 Act”) (25 U.S.C. 177);

9 (3) to the extent any interest in non-Indian
10 land transferred into trust pursuant to section 5 vio-
11 lates section 2116 of the Revised Statutes (com-
12 monly known as the “Indian Trade and Intercourse
13 Act”) (25 U.S.C. 177), that transfer shall be valid,
14 subject to the condition that the transfer is con-
15 sistent with all other applicable Federal laws; and

16 (4) the Tribes, allottees, and non-Indian land-
17 owners waive and release all claims that the Tribes,
18 allottees, and non-Indian landowners may have as-
19 serted against the United States arising out of any
20 interest in the Indian land or non-Indian owned land
21 affected by the realignment of the Blackfoot River
22 by the Corp of Engineers.

23 (b) DOCUMENTATION.—The Secretary is authorized
24 to execute and file any appropriate documents (including
25 a plat or map of the transferred Indian land) that are suit-

1 able for filing with the Bingham County clerk or other
 2 appropriate county official, as the Secretary determines
 3 necessary to carry out this Act.

4 **SEC. 5. LAND TO BE PLACED INTO TRUST FOR TRIBES.**

5 Effective beginning on the date on which the amounts
 6 appropriated pursuant to section 12 are distributed in ac-
 7 cordance with that section to the Blackfoot River Flood
 8 Control District No. 7, the non-Indian land shall be con-
 9 sidered to be held in trust by the United States for the
 10 benefit of the Tribes.

11 **SEC. 6. TRUST LAND TO BE CONVERTED TO FEE LAND.**

12 Effective beginning on the date on which the amounts
 13 appropriated pursuant to section 12 are distributed in ac-
 14 cordance with that section to the tribal trust fund account
 15 and the allottee trust account, the Indian land shall be
 16 transferred to the Blackfoot River Flood Control District
 17 No. 7 for conveyance to the non-Indians acquiring Indian
 18 land.

19 **SEC. 7. TRIBAL TRUST FUND ACCOUNT AND ALLOTTEE**
 20 **TRUST ACCOUNT.**

21 (a) TRIBAL TRUST FUND ACCOUNT.—

22 (1) ESTABLISHMENT.—There is established in
 23 the Treasury of the United States an account, to be
 24 known as the “tribal trust fund account”, consisting

1 of such amounts as are deposited in the account
2 under section 12(b)(1).

3 (2) INVESTMENT.—The Secretary of the Treas-
4 ury shall invest amounts in the tribal trust fund ac-
5 ount for the benefit of the Tribes, in accordance
6 with applicable laws and regulations.

7 (3) DISTRIBUTION.—The Secretary of the
8 Treasury shall distribute amounts in the tribal trust
9 fund account to the Tribes pursuant to a budget
10 adopted by the Tribes that describes—

11 (A) the amounts required by the Tribes;
12 and

13 (B) the intended uses of the amounts, in
14 accordance with paragraph (4).

15 (4) USE OF FUNDS.—The Tribes may use
16 amounts in the tribal trust fund account (including
17 interest earned on those amounts), without fiscal
18 year limitation, for activities relating to—

19 (A) construction of a natural resources fa-
20 cility;

21 (B) water resources needs;

22 (C) economic development;

23 (D) land acquisition; and

24 (E) such other purposes as the Tribes de-
25 termine to be appropriate.

1 (b) ALLOTTEE TRUST ACCOUNT.—

2 (1) ESTABLISHMENT.—There is established in
3 the Treasury of the United States an account, to be
4 known as the “allottee trust account”, consisting of
5 such amounts as are deposited in the account under
6 section 12(b)(2).

7 (2) DEPOSIT INTO IIMS.—Not later than 60
8 days after the date on which amounts are deposited
9 in the allottee trust account under section 12(b)(2),
10 the Secretary of the Treasury shall deposit the
11 amounts into individual Indian money accounts for
12 the allottees.

13 (3) INVESTMENT.—The Secretary of the Treas-
14 ury shall invest amounts in the individual Indian
15 money accounts under paragraph (2) in accordance
16 with applicable laws and regulations.

17 **SEC. 8. ATTORNEYS FEES.**

18 (a) IN GENERAL.—Subject to subsection (b), of the
19 amounts appropriated pursuant to section 12(a), the Sec-
20 retary shall pay to the attorneys of the Tribes and the
21 non-Indian landowners such attorneys fees as are ap-
22 proved by the Tribes and the non-Indian landowners.

23 (b) LIMITATION.—The total amount of attorneys fees
24 paid by the Secretary under subsection (a) shall not exceed
25 \$35,000 of the amounts distributed to the Tribes,

1 allottees, and the non-Indian landowners under section
2 12(b).

3 **SEC. 9. EFFECT ON ORIGINAL RESERVATION BOUNDARY.**

4 Nothing in this Act affects the original boundary of
5 the Reservation, as established by Executive order during
6 calendar year 1867 and confirmed by treaty during cal-
7 endar year 1868.

8 **SEC. 10. EFFECT ON TRIBAL WATER RIGHTS.**

9 Nothing in this Act extinguishes or conveys any water
10 right of the Tribes, as established in the agreement enti-
11 tled “1990 Fort Hall Indian Water Rights Agreement”
12 and ratified by section 4 of the Fort Hall Indian Water
13 Rights Act of 1990 (Public Law 101–602; 104 Stat.
14 3060).

15 **SEC. 11. DISCLAIMERS REGARDING CLAIMS.**

16 Nothing in this Act—

17 (1) affects in any manner the sovereign claim
18 of the State of Idaho to title in and to the beds and
19 banks of the River under the equal footing doctrine
20 of the Constitution of the United States;

21 (2) affects any action by the State of Idaho to
22 establish that title under section 2409a of title 28,
23 United States Code (commonly known as the “Quiet
24 Title Act”);

1 (3) affects the ability of the Tribes or the
 2 United States to claim ownership of the beds and
 3 banks of the River; or

4 (4) extinguishes or conveys any water rights of
 5 non-Indian landowners or the claims of such land-
 6 owners to water rights in the Snake River Basin Ad-
 7 judication.

8 **SEC. 12. FUNDING.**

9 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
 10 authorized to be appropriated to carry out this Act
 11 \$700,000.

12 (b) DISTRIBUTION.—After the date on which all at-
 13 torneys fees are paid under section 8, the amount appro-
 14 priated pursuant to subsection (a) shall be distributed
 15 among the Tribes, the allottees, and the Blackfoot River
 16 Flood Control District No. 7 as follows:

17 (1) \$263,406 shall be deposited in the tribal
 18 trust fund account established by section 7(a)(1).

19 (2) \$230,489 shall be deposited in the allottee
 20 trust account established by section 7(b)(1).

21 (3) \$165,550 shall be provided to the Blackfoot
 22 River Flood Control District No. 7 for—

23 (A) distribution to the non-Indian land-
 24 owners on a pro rata, per-acre basis; and

25 (B) associated administrative expenses.

1 (c) REMAINING AMOUNTS.—Any amounts remaining
2 after the distributions under subsection (b) and section 8
3 shall be—

4 (1) split equally between the Blackfoot River
5 Flood Control District No. 7 and the Tribes; and

6 (2) used by the Blackfoot River Flood Control
7 District No. 7 and the Tribes for administrative ex-
8 penses.

9 (d) PER CAPITA PAYMENTS PROHIBITED.—No
10 amount received by the Tribes under this Act shall be dis-
11 tributed to a member of the Tribes on a per capita basis.

12 **SEC. 13. EFFECTIVE DATE.**

13 This Act takes effect on the date on which the
14 amount described in section 12(a) is appropriated.

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